

Shri V.H.Vora, Advocate, for the Petitioner (in both the matters).

Shri M.R.Anand, Government Pleader, as Senior Advocate, with Shri A.G.Uraizee, Assistant Government Pleader for Respondents Nos.1 and 2 in Special Civil Application No.6921 of 1990 and for the Respondents in Special Civil Application No.6923 of 1990.

Rest served.

-----

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 19/09/96

#### ORAL JUDGEMENT

The subject-matter involved in both these petitions is one parcel of land bearing survey No.12 admeasuring 12 acres 10 gunthas situated in Mirzapar taluka Bhuj district Kutch (the disputed land for convenience). It originally belonged to the petitioner of Special Civil Application No.6923 of 1990 (the Second Petition for convenience). He appears to have sold it to the petitioner of Special Civil Application No.6921 of 1990 (the First Petition for convenience). The impugned orders are passed on the basis that acquisition of the disputed land by the petitioner of the Second Petition was illegal. Common questions of law and fact are found arising in both these petitions. I have therefore thought it fit to dispose of both these petitions by this common judgment of mine. For the sake of convenience I shall refer to the petitioner of the Second Petition as the Vendor and that of the First Petition as the Vendee.

2. The facts giving rise to these two petitions move in a narrow compass. The disputed land was originally an inami land and on its abolition by the Kutch Inam Abolition Act, 1958 it came to be granted to the father of the Vendor as a new and impartible tenure. It appears that the original grantee transferred it in favour of the Vendor being his son. That transfer was without prior permission of the Collector of district Kutch at Bhuj. It appears that an application was made for regularisation of such unauthorised transfer. By his order passed on 30th December 1981, the Collector at Bhuj (respondent No.2 in each petition), regularised the transfer of the land by the original grantee in favour of the Vendor. Its copy is Annexure-A to the Second Petition. It appears that thereafter the disputed land was sold by the Vendor to the Vendee. The Vendee applied for what is popularly known as the N.A.Permission. By his order passed on 30th January 1984, the Taluka

Development Officer of the Taluka Panchayat at Bhuj (respondent No.3 in the First Petition), the N.A.Permission with respect to the disputed land came to be granted on certain terms and conditions. Its copy is at Annexure-A to the First Petition. Pursuant thereto, the disputed land was plotted out and different plots were allotted to different persons. It appears that allottees have raised their houses thereon. A copy of the list showing occupants of houses raised on the disputed land after plotting it out is at Annexure-B to each petition. It appears that the order at Annexure-A to the First Petition came to the notice of the concerned officer of the State Government (respondent No.1 to each petition). He appears to have found it not according to law. Its suo motu revision under Section 211 of the Bombay Land Revenue Code, 1879 (the Code for brief) was therefore contemplated. A show cause notice thereupon came to be issued on 13th May 1986 under Section 211 of the Code calling upon the Vendee to show cause why the N.A.Permission at Annexure-A to the First Petition should not be revised. Its copy is at Annexure-C thereto. The Vendee appears to have filed his reply thereto on 23rd June 1986. Its copy is at Annexure-D to the First Petition. It appears that nothing happened thereafter. A fresh show cause notice came to be issued on 11th January 1989 under Section 211 of the Code calling upon the Vendee to show cause why the order at Annexure-A to the First Petition should not be revised. Its copy is at Annexure-E thereto. The Vendee filed his reply thereto on 6th February 1989. Its copy is at Annexure-F thereto. Thereafter, by the order passed by and on behalf of respondent No.1 on 3rd January 1990, the N.A.Permission order at Annexure-A to the First Petition came to be set aside. Its copy is at Annexure-G to the First Petition. That aggrieved the Vendee. He has therefore challenged it before this court by means of the First Petition under Articles 226 and 227 of the Constitution of India. In the meantime, the order at Annexure-A to the First Petition appears to have come to the notice of the concerned officer of respondent No.1. He appears to have found it not according to law. Its suo motu revision under Section 211 of the Code was therefore contemplated. A show cause notice thereupon came to be issued to the Vendor on 10th January 1989 calling upon him to show cause why the order at Annexure-A to the Second Petition should not be revised. Its copy is at Annexure-C thereto. The Vendor filed his reply thereto on 20th November 1989. Its copy is at Annexure-D to the Second Petition. Thereafter, by the order passed on 3rd January 1990, respondent No.1 set aside the order at Annexure-A to the Second Petition. Its copy is at Annexure-E

thereto. That aggrieved the Vendor. He has therefore challenged it by means of the Second Petition under Articles 226 and 227 of the Constitution of India.

3. So far as the impugned order at Annexure-G to this petition is concerned, it cannot be sustained in law for a moment in view of the binding ruling of the Supreme Court in the case of STATE OF GUJARAT v. PATEL RAGHAV NATHA reported in (1969) 10 Gujarat Law Reporter at page 992 and the binding Division Bench ruling of this court in the case of BHAGWANJI BAWANJI PATEL v. STATE OF GUJARAT reported in (1971) 12 Gujarat Law Reporter at page 156. It has been held by the Supreme Court in its aforesaid binding ruling that powers under Section 211 of the Code qua the N.A.Permission have to be exercised within the reasonable period of three months from the date of the N.A.Permission order. In its aforesaid Division Bench ruling, this court has held that, in any case, the revisional powers under the aforesaid statutory provision have to be exercised within the reasonable period of one year. Both the aforesaid rulings are binding to this court.

4. Both the aforesaid rulings are on all fours applicable in the case represented by the First Petition. The N.A.Permission order at Annexure-A thereto was passed as early as on 30th January 1984. The show cause notice for its revision was issued earlier on 30th May 1986, more than two years after the date of the order and subsequently on 11th January 1989, nearly five years from the date of the order. Such revisional powers for revising the N.A.Permission order after such a long time could not have been exercised in view of the aforesaid binding rulings of the Supreme Court and this court. The impugned order at Annexure-G to the First Petition cannot therefore be sustained in law and it has to be quashed and set aside.

5. So far as the Second Petition is concerned, the revisional powers under Section 211 of the Code for revising the order at Annexure-A thereto passed on 30th December 1981 were sought to be exercised nearly seven years thereafter by issuing the show cause notice on 10th January 1989 at Annexure-C thereto. In view of the aforesaid Division Bench ruling of this court, exercise of revisional powers under Section 211 of the Code beyond the reasonable period of one year would be incompetent. The impugned order at Annexure-E to the Second Petition cannot therefore be sustained in law on this ground alone.

6. Even otherwise, on merits also, the impugned order at Annexure-E to the Second Petition cannot be sustained in law. It transpires from the order at Annexure-A to the Second Petition that respondent No.2 took into consideration two Government Resolutions for regularisation of transfer of land by the original grantee in favour of the Vendor as his son without obtaining any prior permission from respondent No.2. Copies of those Government Resolutions are annexed to the Second Petition as Annexures-F and G. The contents of the aforesaid Government Resolutions are very clear. Those Government Resolutions would justify the order passed by respondent No.2 at Annexure-A to the Second Petition. It may be noted that in his reply at Annexure-D to the Second Petition, the Vendor did point out the aforesaid Government Resolutions for supporting the order at Annexure-A thereto. It is unfortunate that, for some unexplicable, mysterious and unknown reasons, the author of the impugned order at Annexdure-E to the Second Petition has not chosen to consider those Government Resolutions at all. The impugned order at Annexure-E to the Second Petition can therefore be said to be suffering from the vice of non-application of mind on the part of its author. It cannot be sustained in law. As pointed out hereinabove, the terms of the Government Resolutions at Annexure-F and G to the Second Petition are quite clear and would justify the order passed by respondent No.2 at Annexure-A to the Second Petition. In that view of the matter, the impugned order at Annexure-e to the Second Petition cannot be sustained in law.

7. In the result, both these petitions are accepted. The orders passed by and on behalf of the State Government at Annexure-G to the First Petition and at Annexure-E to the Second Petition are quashed and set aside. Rule issued on each petition is accordingly made absolute with no order as to costs.

#####